

May 14, 2012

William B. Wolpert, Architect
7 Fourth Street, Studio 61
Petaluma, CA 94952

Re: Your Request for Advice
Our File No. A-12-071

Dear Mr. Wolpert:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the “Act”)¹ and is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Please note, there are other bodies of law, separate and apart from the Act’s conflict-of-interest provisions, that may apply to your situation. We urge you to check with the City Attorney to determine whether any other laws are applicable in light of the facts you present. Also, the Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

QUESTION

Is there an exception that allows a planning commissioner who is also an architect to submit architectural drawings for approval to various city departments and have contact with agency staff regarding the drawings, including the city’s requirements and processes for approval of the drawings?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

CONCLUSION

There is an exception to the prohibition on using or attempting to use one's official position to influence a governmental decision when preparing drawings or submissions of an architectural, engineering or similar nature to be used by a client in connection with a proceeding before the official's agency. Under the exception, an official may respond to questions from agency staff regarding the evaluation of drawings and submissions prepared by the official, or relating to their movement through the approval process.

FACTS

You are a member of the Planning Commission for the city of Petaluma. You also operate Green Building Architects, an architectural firm located in Petaluma. Your client, Friends of the Petaluma River, has an application pending before the Planning Commission for a project on which you prepared the architectural drawings. The project involves the restoration of a city-owned building that is a locally designated historic building.

You have spoken with staff of the Community Development Department to understand the city's requirements and processes so that you can provide to your client projections of your time and expenses for your work on the project.

ANALYSIS

The Act's conflict-of-interest provisions ensure that public officials will "perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b).) The Act prohibits public officials from making, participating in making or using their official position to influence a governmental decision in which they have a financial interest. (Section 87100.) As a planning commissioner, you are a public official for purposes of the Act.

The prohibition applies to specific activities – making, participating in making, or attempting to influence a governmental decision. These terms are defined broadly. (Regulations 18702.1-18702.3.) Regulation 18702.3 explains how to determine when an official is using or attempting to use his or her official position to influence a governmental decision:

"(a) With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer."

Therefore, attempts to influence include appearances or contacts on behalf of a client. However, the Commission has recognized an exception for presentation of architectural, engineering, or similar drawings by the official to his or her own agency. You, as a professional architect, would fall within this exception. Pursuant to Regulation 18702.4(b):

“Notwithstanding Title 2, California Code of Regulations, section 18702.3(a), an official is not attempting to use his or her official position to influence a governmental decision of an agency covered by that subsection if the official:

¶ . . . ¶

(4) Prepares drawings or submissions of an architectural, engineering or similar nature to be used by a client in connection with a proceeding before any agency. However, this provision applies only if the official has no other direct oral or written contact with the agency with regard to the client’s proceeding before the agency except for necessary contact with agency staff concerning the processing or evaluation of the drawings or submissions prepared by the official.”

“Necessary contact” has been narrowly construed to only allow an official to respond to questions from agency staff regarding the evaluation of drawings and submissions prepared by the official or relating to their movement through the approval process. (*Holbert* Advice Letter, No. I-90-080.) Under the exception for the movement of drawings through the approval process, you are not prohibited from communicating with city staff regarding requirements and processes for submitting the drawings or submissions.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Valentina Joyce
Counsel, Legal Division

VJ:jg